

## **WHAT DO I NEED TO KNOW TO SET UP A ROMANIAN COMPANY?**

Most people who [set up companies in Romania](#) chose to incorporate a limited liability company ("SRL"). If you are considering setting up a company, there are certain initial matters which you need to consider. These are the steps, legal procedures, documents required and the associated costs to set up a SRL.

This article is indicative only and is not specific legal advice or a detailed explanation of Romanian company law. It does outline the [incorporation procedures](#). This article is prepared on the basis that a decision has already been taken to open a SRL.

Any person can be a shareholder in a Romanian company. There is no limitation on citizenship or residency of the shareholders. There is no limit on the number of companies in which an individual or company can be the sole shareholder.

### **Steps in the legal process:**

- 1) The initial step is an application to the Romanian Trade Registry (the "**Trade Registry**") for the reservation of the required name and any logo of the proposed company. They review electronically the application and the names applied for and issue a confirmation of name availability. Normally they accept the first name requested. In certain cases, although the name may initially be accepted there are circumstances when at the time of registration, the name will be refused.
- 2) Preparation and signature of the Constitutive Act in English and Romanian as required. (Memorandum and Articles of Association).
- 3) Application to the Trade Registry for the registration of the proposed company.
- 4) Approval of the registration of the proposed company; and
- 5) Publication of the incorporation of the company in the Official Gazette.

### **Application to the Romanian Trade Registry for the reservation of the name and any logo of the proposed company.**

A request is filed with the Trade Registry, indicating the preferred name for the proposed company. The Trade Registry will reserve the name, if available. The reservation is valid for ninety days from the date the reservation is issued by the Trade Registry. If registration is not completed in the ninety-day period, then a fresh reservation application must be made to reserve the name of the proposed company. Should the proposed name include the word "Romania" then an application must be made to the

Romanian Government for the right to incorporate a company which includes the word Romania in its name.

**Preparation and signature of the Constitutive Act (Memorandum and Articles of Association).**

The Constitutive Act is prepared and must be signed by the prospective shareholder(s). In the Constitutive Act, the capital if any of the company is expressed in RON. If there has been a contribution in kind to the capital of real estate, the Constitutive Act must be signed in front of a notary and a valuation of the in-kind asset prepared by a registered valuer must be supplied. The Constitutive Act can if required be signed in Romania by the lawyers acting on the incorporation of the company under a lawyer's power of attorney.

**Application to the Trade Registry for the registration of the proposed company.**

An application for the registration of the proposed company is made to the Trade Registry. The application includes the documents listed below. The Trade Registry will review all the documents submitted and approve or reject the registration of the proposed company.

The application to the Trade Registry for the registration of the proposed company must be submitted inter alia with the following documents:

- a) The signed Constitutive Act of the proposed company. This must include the business object of the company; the law requires a detailed list of the activities that will be carried on by the company, including the main business domain and the main activity (CAEN codes); the names of the shareholders and the full names of the administrator/s of the company.
- b) If applicable, the decision of a foreign company to establish the proposed company in Romania.
- c) Copies of the corporate documents of the foreign company that is to be the shareholder of the proposed company.
- d) In the case of a corporate shareholder an up-to-date extract from the relevant commercial registry confirming the valid registration of the corporate shareholder. This document must be apostilled, if required by the law, translated into Romanian and the translation notarized.
- e) The reservation of the name and the logo (if the company is to have a logo) of the proposed company.

- f) Details of the address of the headquarter of the proposed company together with a copy of the rent contract. After registration of the Company, the Trade Register office sends the rent contract to the tax authorities where the building is located.
- g) In accordance with Romanian law [Hammond Partnership as lawyers](#) can supply a virtual office for the first 12 months of company's life in Romania. This enables a company to be formed quickly. This contract is registered with the Romanian tax authorities.
- h) Declaration as to the identity of the ultimate beneficial owner of the shares in the Company or the person who will control the Company.
- i) Details of the capital - the amount of the capital and how it will be contributed, in cash or in kind. There is no requirement for a SRL to have a share capital, although we advise clients to form a SRL with a minimum share capital of ten RON. If the SRL has a capital 30% must be paid within three months of incorporation and the balance within twelve months of incorporation.
- j) After formation, the company can freely open a bank account in Romania, subject to the banks requirements in connection with knowing their client.
- k) In respect of an in-kind contributions to the capital of the company proof of ownership and a valuation report in relation to such contribution must accompany the application for formation.
- l) A declaration made by the individual shareholders, or by the representative of the corporate shareholder, they are aware of the provisions of the Romanian Penal Code referring to false declaration and that they have complied with the provisions of Romanian Law.
- m) A declaration made by the proposed administrator(s) that the conditions required for their appointment have been fulfilled.
- n) The signature of the proposed administrator.
- o) A declaration made by foreign administrators and shareholders that they do not have outstanding tax obligations to the Romanian authorities.
- p) Receipts proving the payment of the registration fees, and
- q) If necessary, a power of attorney in favor of the person or persons empowered to deal with the registration of the proposed company in Romania.

These documents do not have to be signed in Romania and can be signed outside of Romania and legalized for use in Romania as required.

Where the shareholders are foreign individuals or legal persons, any documents required for the incorporation of the proposed company, which are supplied in any other language other than Romanian must be translated into Romanian and the translation notarized. Dual language documents in Romanian and English or any other language can be signed.

If the Trade Registry approves the incorporation of the proposed company, it will then be registered in three days. The Trade Registry can approve or reject the registration of the proposed company. In case of rejection of the application an appeal against the decision can be made within fifteen (15) days.

After the Trade Registry has approved the incorporation of the company, the Trade Registry arranges for the publication of an announcement of the registration of the company in the Official Gazette of Romania.

### **The Administrators**

Every company is required to have at least one administrator at the time of incorporation. The administrator of a company may be Romanian or foreign citizen, resident or a non-resident person. The Company Law provides that it is prohibited for an administrator to manage two or more Romanian companies having the same object of activity or that are competitors without the prior consent of the shareholders.

It should be noted that the administrator is obliged to implement the decision of the shareholders meetings, which is the governing body of the company. Administrators have limited powers when compared to company directors as understood in many other legal systems. The Company can decide to grant any powers to the Administrator except for the powers that are expressly given by the law or stated in the Constitutive Act to the shareholders. The powers of the Administrators can be:

- Preparing the Company's financing, operational and investment plans.
- Preparing the annual balance sheet and inventory of the Company that has to be annually approved by the shareholders.
- Preparing the profit distribution plans for the Company and the plan for the recovery of any losses.
- Obtaining all the permits and licenses, authorisations and signing the documents related hereof in the name of the Company.
- Approving the organizational structure of the Company.
- Approving the Company's internal regulations.
- Employing or dismissing of the personnel of the Company.
- Apply for working permits, visas and residence cards and dealing with all matters with Ministry of Labour, Immigration department and other related authorities for

the Company and its employees.

- Opening, operating and closing bank accounts in the name of the Company with banks from Romania or abroad; operating current accounts, depositing funds and withdrawing them in the name of the Company, to sign payment orders as well as credit facilities, loans and electronic banking in the name of the Company.
- Representing the Company in relation to third parties and in the courts of law.
- Can agree to purchase any business, assets or goods, with or without credit/loan, in the name of the Company.
- Can decide upon pledging, leasing, renting or sale of the assets of the Company, in the most favourable terms either movable or immovable assets.

In many instances a decision of the shareholders is required for matters which would normally be the discretionary decision of a director in a non-Romanian company.

At the time of incorporation, the role of the administrators should be clarified. Any of the powers stated above can be limited to certain amounts in case of operations involving money and conclusion of such operations can be subject to pre-approval from the shareholders if this is wanted, for example when buying, selling, renting or constituting as collateral goods in the company's patrimony, whose value exceeds a certain amount or when loans are contracted.

Depending on the specific needs of the Company the Articles of Association can reflect the exact will of the shareholders in regard to the powers of the Administrator(s).

An administrator does not need to be based in Romania, although it is advisable. Most of the powers of an administrator can be delegated to a third party under a power of attorney, if provided for by the Constitutive Act. Examples of these powers are:

- Represent the Company in relation to third parties; conclude contracts with clients and/or suppliers.
- Obtain all the permits and licenses, authorisations and sign the documents related hereof in the name of the Company.
- Open, operate and close bank accounts in the name of the Company with banks from Romania or abroad; operate current accounts, deposit funds and withdraw them in the name of the Company, sign payment orders as well as credit facilities, loans and electronic banking in the name of the Company.

### **Time for incorporation**

Provided a complete set of documents has been lodged with the Trade Registry the period required to complete the registration of a limited liability company in the Trade Registry is three (3) working days.

If at any time it is necessary to amend the constitutive act of a company a certificate confirming any amendments of the constitutive act is issued within five (5) working days from the date the request for alteration is registered with the Trade Registry.

### **Supplementary Provisions**

Additional authorizations may be required depending upon the nature of the business to be carried on by the company. As a rule, these are the normal authorizations in respect of a specific business i.e., banking, financial services, pharmaceuticals, energy etc.

### **Registration with fiscal authorities**

At the time of registration of the company, it is allotted a registration number ("**Fiscal Code**") with the Romanian fiscal authorities. The value added tax number is the Fiscal Code pre-fixed with the letters "RO". Currently a company with a turnover of less than one million (1,000,000) Euro pays a tax of 1% to 3% on its turnover provided it has at least one employee. From 1<sup>st</sup> January 2023 a company with a turnover of less than five hundred thousand (500,000) Euro will pay a tax of 1% on its turnover provided it has one employee. The micro company cannot supply management services the fees of which exceed 20% of its turnover.

A company must be registered for VAT if its turnover is greater than eighty-eight thousand five hundred (88,500) Euro. If the turnover is less, it can apply to be registered as a VAT payer. Currently registration occurs the day following an application. If a company's turnover is more than 100,000 EURO in any one year, then VAT is payable monthly otherwise it is payable quarterly.

### **Obtaining tax identification numbers for the Shareholders and Administrators**

Non-residents who are required by law to supply a declaration of income paid to a nonresident have the obligation to register for tax purposes in Romania. The authorities will assign a tax identification number or code (NIF). This is used for the purpose of declaring any tax obligations to the Romanian tax authorities.

The tax identification number is required for the administrator of a company for the purpose of the VAT registration of the company.

After incorporating the company, it is advisable to obtain the tax identification number for the shareholders and the administrators of the company.

### **Statutory Fees on incorporation**

The fees, which must be paid to complete the registration of a company, are the followings:

- Stamp taxes.
- The translation and notarization fees for all the documents required to be translated and notarized.
- Publication fee for the Official Gazette; and
- Registration fee with the Trade Registry, which is calculated at the date of the filing of the application for registration, taking account of the objects of the proposed company.

It is difficult for the lawyers to provide an accurate estimate of the total cost of these fees as they depend in part upon the cost of publication in the official gazette. We advise that a provision of one hundred and seventy-five (175) EURO is made.

### **Shareholder**

The maximum number of shareholders in a limited liability company cannot exceed fifty and the minimum is one. Any person can be a shareholder in a Romanian company. We would not advise a foreign investor to have other shareholder who are not closely connected with the majority shareholder as under Romanian law unanimity of shareholders is required for certain decisions. If there is not a close relationship between the shareholders, there is the possibility in the event of a dispute in the future that the minority shareholders will be in a ransom or blackmail position against the majority shareholders. Consideration should be given even at incorporation as to what is to happen if a shareholder wishes to leave the company or is asked to leave.

After formation, a company needs to appoint an accountant to deal with the Ministry of Finance regarding the monthly, quarterly and annual filings as well as keeping the company accounting records.

From the above it will be seen that the formation of a SRL is a simple process requiring a number of documents. If proper preparation is made and instructions are given it is possible to form a company within seven days of giving the relevant instructions.